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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 1190th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 27 October 1992, at 3 p.m.

Chairman: Mr. EL SHAFEI

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of the United Republic of Tanzania (CCPR/C/42/Add.12) (continued)

1. The CHAIRMAN invited the Tanzanian delegation to reply to the questions put orally by members of the Committee in connection with section I of the list of issues to be taken up.

2. Mrs. MREMA (United Republic of Tanzania), replying first of all to the question about equality between men and women and the relationship between constitutional law and customary law in respect of women's rights, said that customary law tended to favour men over women. For example, women did not have the right to own or inherit property. Women's organizations had eventually managed to get the Government to embark upon legislative reform and the Law Reform Commission would redraft or amend certain laws so as to refer to the rights of women. Some measures had been taken but as most of the laws concerning the rights of women had not yet changed, women faced a large number of problems before the courts. The necessary amendments would be made to the laws, but it was impossible to say exactly when they would enter into force.

3. The Law Reform Commission had embarked upon the codification of customary law. When the courts heard a case involving customary law, they invariably called in assessors who were quite familiar with the customs of specific tribes, and that helped them to form an opinion. The assessors' only role was to advise the court and their opinion did not have binding force. It was to be hoped that the situation would improve as a result of the codification of customary law.

4. One member of the Committee had asked why if, during the referendum, the majority of the population had been in favour of the maintenance of the single-party system, the Government had decided to go along with the wishes of the minority. It could be assumed that the Government did not want to find itself isolated at a time when the entire world was proceeding in the direction of democratization and that many countries, in Africa as well as in Europe, were going over from a single-party system to a multiparty system. By failing to take account of the views of the minority, the Government might also have provoked serious trouble in the country. Voters would be able to obtain sufficient information about the advantages and disadvantages of each party, and it was they who decided. Nothing would prevent the continuation of the single-party system if, for example, CCM, the former single party, was the only party to obtain sufficient votes. Presidential elections, like legislative elections, took place every five years. The last elections had taken place in 1990 and the next would be held in 1995. A number of replies to the questions put by members of the Committee would be found in the amended text of the Constitution and in the new electoral law.

5. Various questions had been asked concerning the present constitutional changes and the way they affected Zanzibar. One had concerned the relationship between the new Constitution of the United Republic of Tanzania

and the Constitution of Zanzibar. Article 2 of the amended Constitution and article 2 of the new law on political parties stated that those two instruments applied to Tanzania, and therefore to Zanzibar as well as to the continental part of the Union. The transition to a multiparty system and all the other changes made in the Constitution were therefore equally applicable to Zanzibar. The first annex to the Constitution of 1991 listed matters that were of Union concern (defence and security, police, citizenship, immigration, foreign trade, etc.). Part I of the second annex contained a list of laws (laws on the civil service, the judiciary and citizenship and the law on the Union between Tanganyika and Zanzibar) which could be amended only by a two-thirds majority of members of Parliament, and part II a list of matters which, although not exclusively of Union concern, could be the subject of amendments only if they were approved by a two-thirds majority of the deputies of continental Tanzania and the deputies of Zanzibar.

6. She explained that all political parties, with the exception of CCM, which had been a political party before the adoption of the Act on political parties, were required to register with the Registrar. The founding members of a party should request registration in the manner laid down by law. They should annex a copy of the party's Constitution and prove that membership was voluntary and open to all citizens of the United Republic of Tanzania without discrimination, that the party did not advocate any religious beliefs and did not intend to promote the interests of a religious or tribal group or the interests of a particular region. It should have at least 200 members fulfilling the conditions laid down to vote in legislative elections. Its members should come from at least 10 regions of the United Republic of Tanzania and some of them should be the islands of Zanzibar and Pemba. The amended Constitution also stated that, in order to be registered, a party must not advocate the break-up of the Union. A party calling for the autonomy of Zanzibar would therefore be contrary to the Constitution.

7. With respect to the relationship between the Constitution of the Party (CCM), the Tanzanian Constitution and the Constitution of Zanzibar, she explained that CCM's Constitution had been modified to make allowance for the present transitional period. CCM had been traditionally financed by the voluntary contributions of its members but also by large State subsidies. All its assets had now been turned over to the State. For example, one of the buildings constructed for CCM would become a Parliament building. CCM, like the new parties, should be financially independent. It had therefore been obliged to reduce the scale of its activities.

8. What would happen in the event of a conflict between the Covenants or other human rights instruments and the Constitution? The Constitution did not expressly indicate whether precedence was given to domestic law or international law. In practice, when Tanzania acceded to an international instrument an implementing statute had to be adopted to embody that instrument in domestic law. In the event of conflict, the Constitution prevailed.

9. In response to a member of the Committee who had requested information about the role of the Special Constitutional Court in the event of conflict, she explained that its role was defined by the Constitution and consisted in

dealing with questions of interpretation. The reconciliatory decisions taken by the Special Constitutional Court had binding force and were final; the Constitution stated that they were not to be referred to Parliament.

10. She pointed out that paragraphs 9, 10 and 11 of the report were no longer valid owing to the fact that the country had gone over from a single-party to a multiparty system.

11. Replying to a member of the Committee who had asked what were the elements of the doctrine of "Ujamaa" and self-reliance (see para. 35 of the report), she said that the word "Ujamaa" meant socialism and, specifically, that means of production were the property of the State. The term was used in article 3 of the former Constitution. That article, in which CCM had been proclaimed the sole political party and the final authority in respect of all matters of the United Republic of Tanzania, had been deleted in the new Constitution.

12. Mr. MANGACHI (United Republic of Tanzania) said that, in the new Constitution, article 3 had been replaced by the following: "All matters involving registration and the application of policies shall be decided in accordance with the present Constitution." Furthermore, under the new Constitution all major means of production could be privatized, although the State could also play a role in production. All reference to CCM's supremacy had been deleted and replaced by a reference to the authority of the Government.

13. Mrs. MREMA said that the Constitution no longer contained references to "Ujamaa" and self-reliance. Nor would there any longer be any question of CCM's controlling all political activities.

14. The question asked about CCM's Constitution and protection of the rights of its members in the event of expulsion was no longer relevant owing to the transition to the multiparty system.

15. As for the separation of powers between the executive, judiciary and legislature, the Constitution stated that judges were appointed by the President after consultation with the Judicial Service Commission, which had been set up under the Judiciary Act. It was that Commission which made recommendations concerning such appointments.

16. With respect to the impact of the scarcity of resources on the functioning of the judiciary, she explained that the two-session court work system had been introduced to speed up the hearing of cases, but without great success. The country had too few lawyers to cope with the number of cases waiting to be heard.

17. A person who was arrested had to be brought before a magistrate within 24 hours; however, if the arrest took place on a Friday, the hearing was set for the following Monday. In the rural areas, where there was no Resident or District Magistrate in the vicinity, and where transport problems arose, almost each village had a Primary Court which first of all examined the

case before referring it to a court of minor jurisdiction or a District Court. The magistrates who presided over the Primary Courts were not legally qualified but could hear minor cases.

18. Lastly, she said that the multiparty system was no longer a theoretical concept but had actually been introduced, as was demonstrated, for example, by newspaper articles and the meetings organized by parties. As for the assistance that CCM could provide in connection with the establishment of parties, it was rather unlikely that the new parties would like to take advantage of it. The transitional period should continue to be uneventful.

19. Mr. MANGACHI (United Republic of Tanzania) said that his delegation had, on the basis of the information available to it, tried to reply as fully as possible to the questions raised and was prepared to provide supplementary details if necessary. In view of the large number of statements made about the recent transition to a multiparty system, he said that the political will to adopt that system was demonstrated by the amendments made in that connection to the Constitution.

20. Great caution had to be exercised, however, since there were divisive elements that could be exploited in Tanzania. For that reason, when the Constitution had been amended care was taken to ensure that the multiparty process did not result in social turmoil. It was in that spirit that the conditions for the registration of parties had been decided upon. The national unity of the Tanzanian State had to be protected.

21. It had been asked why CCM had accepted the transition to a multiparty system. Had CCM believed in dictatorship, it could have rejected the results of the referendum and stated that it should remain the sole political party. Yet the opinion of the minority had to be taken into account, and even among advocates of the single-party system there were some who desired the democratization of CCM. The concept of the party's supremacy had therefore been done away with. CCM must henceforth abandon its predominant position in the conduct of State affairs, and those among its members who were civil servants must resign if they wanted to pursue a political career.

22. The multiparty system had now been introduced throughout the territory of the Union, and the cultural, social and political situation was unlikely to incite any part of the national territory to secede.

23. A state of emergency had been declared in the country, but the Constitution contained very specific provisions concerning the measures to be taken in that event. The Tanzanian delegation had duly noted the observations of members of the Committee on the subject and, when it revised the Constitution, the Government would define with great care the powers to be exercised in an emergency in order to avoid any abuses on the part of the authorities. He went on to explain that the President of the Republic was elected for a period of five years, renewable for a further five years, and that it was not the intention, at the present stage, to amend that provision in the context of the multiparty system. Lastly, CCM still advocated a policy of self-reliance of the kind adopted officially in 1967, although at its annual conference in December 1992 it might modify that policy in the light of the multiparty system. Principles of socialism and self-reliance would

probably be retained, but it was also possible that economic policy would be reformulated to open the way, for example, to privatization in certain sectors.

24. Mr. WENNERGREN requested further details about the status of the island of Pemba in comparison with Zanzibar, and about the status of the island in the framework of the Union.

25. Mr. SADI asked whether the introduction of the multiparty system and the reformulation of economic policy would not affect the Tanzanian people's right to self-determination in the economic sphere as set out in article 1, paragraph 1, of the Covenant, which stated that all peoples should "freely pursue their economic, social and cultural development".

26. Mr. PRADO VALLEJO was still curious about the exact situation in Zanzibar. He wondered in particular whether any repression had taken place and whether there were any political prisoners in that part of the territory.

27. Adoption of the multiparty system principle certainly constituted considerable progress, and he requested the Tanzanian delegation to provide further details about the organization of the new political parties and about any domestic problems that might arise in law or in practice. He also asked for more information about the extraordinary powers that could, according to paragraph 62 of the report, be vested in certain high officials by the President, how such powers were exercised and in what circumstances. Lastly, he requested additional details about the constitutional provision permitting derogation from the right to life (para. 65 of the report). It was his understanding that the death penalty, for example, could be imposed at the end of a trial but he found it surprising that the Constitution should state, without giving details, that derogation from the right to life was possible.

28. Mr. NDIAYE noted that the report of the United Republic of Tanzania had been drawn up in accordance with the Committee's guidelines and in a very honest spirit. The country had made laudable efforts to shake off dictatorship and its President had had the courage to acknowledge that the economy was not developing as desired and that public affairs were not being administered as rigorously as they should be. It was therefore gratifying to note the change of political direction represented by the introduction of a multiparty system in the country.

29. Referring to paragraphs 32 and 33 of the report, he said it was surprising that Tanzania had a high level of illiteracy and that most of the population were not aware of the existence of the Covenant or of their rights. He had been under the impression that the Tanzanian press was highly developed and that national languages such as Kiswahili were widely used - a situation which should have been quite favourable to the dissemination and promotion of human rights. Yet it seemed that that was not the case. Furthermore, he wondered whether, in Tanzania, custom was the source of law, just like written law, or whether the judges, not having very precise laws at their disposal, preferred to apply traditional law.

30. Mr. MANGACHI (United Republic of Tanzania), replying to the question put by Mr. Wennergren, said that the island of Pemba had, historically and

officially, always been an integral part of the Tanzanian territory called Zanzibar. Zanzibar had its own Parliament, separate from that of the Union, but the autonomous Government of Zanzibar participated fully in the Government of the Union. In that sense, the island of Pemba was not regarded as a separate entity, either from the standpoint of Zanzibar or that of the Union. Differences of opinion, both political and social, could obviously arise between Zanzibar and the Union, and that fact was duly taken into account.

31. The principle of self-reliance, on which the country's policy was officially based, was explicitly mentioned in the Constitution. Indeed, the Tanzanian Government considered that recourse to foreign assistance should be exceptional. Furthermore, the concept of socialism should be viewed in the African context, where the interests of the community should take precedence over those of the individual. Such was the official policy of CCM. In a multiparty situation, that traditional philosophy must necessarily be adapted to modern concepts. In that respect it was too early to know how far the new political parties that would be formed between the present time and 1995 would embody traditional concepts in their own general policy principles. The Act on the multiparty system had been ratified only in June 1992 and at the present stage 18 parties had requested registration, but they had to be in existence for six months in order to demonstrate that they satisfied the conditions laid down to assume the role of a full-fledged political party, as CCM was doing at the present time.

32. Replying to Mr. Prado Vallejo's questions, he said that there were no political prisoners in Zanzibar. The case involving Zanzibar's former Prime Minister was still being heard; he had been released on bail, enjoyed freedom of movement and had even launched a campaign in favour of the new provisions on the multiparty system.

33. As regards the organization of new parties, all the necessary legal and constitutional steps had been taken to ensure that election campaigns could be conducted freely in the country. For example, any registered party could hold public meetings provided that it informed the local authorities so that the necessary security arrangements could be made. The new parties could express themselves through the press and on the radio. In only a few cases had that privilege been abused. For example one leader had embarked upon a campaign on behalf of a political party before the constitutional provisions providing for a multiparty system had been adopted. He had therefore been arrested, brought before a court and then released.

34. He added that a multiparty system had existed in Tanzania before 1964 but that, in the absence of democracy, no political party had been able to play a constructive role. The multiparty system had now been restored, but CCM would probably remain the leading party for many years to come, provided that it was realistic enough to avoid the errors of the past and strong enough to cope with the requirements of democracy.

35. Mrs. MREMA (United Republic of Tanzania), replying to the questions put by Mr. Ndiaye, said that although traditional law was not in general codified, the Law Reform Commission had decided to embark upon that task which would be long and difficult because the country was not culturally homogenous and because customs - of which there were a great many - could vary even within

one and the same social group. Generally speaking, the courts applied written law although when traditional law was invoked the assessors were called upon to give their opinion which was, however, only of a consultative nature.

36. Tanzania had a good literacy level, although it should be borne in mind that 80 per cent of the population who were literate did not necessarily know how to read and write the languages which, for example, could be used to inform them of their rights such as those set out in the Covenant. Indeed, the Government's priority was to ensure that adults were sufficiently educated to be able to make a useful contribution to the life of the society in which they participated directly and in which, in general, languages other than English or Kiswahili were used. The Government lacked the financial resources necessary to have all human rights instruments, which were often in English, translated into local languages. Moreover, while the radio was admittedly an essential means of disseminating information, it should be borne in mind that families in rural areas did not necessarily have a receiver.

37. Lastly, replying to the questions raised by Mr. Prado Vallejo, she said that she had no knowledge of any situation in which senior officials had been invested with extraordinary powers. As for the possibility of derogating from the principle of the right to life under article 31 of the Constitution, she assumed that it was an allusion to a hypothetical emergency situation in which certain rights could be the subject of derogations but had no official information on the subject.

38. The CHAIRMAN thanked the Tanzanian delegation for its replies to the oral questions put by members of the Committee in connection with section I of the list of issues to be taken up. He invited members of the Committee to put questions concerning the issues listed under section II.

39. Mr. AGUILAR URBINA said that, despite Mrs. Mrema's explanation of the exceptional powers that could be exercised by the President, he still had some doubts about the constitutional provision referred to in paragraph 68 of the report, namely, that Parliament could decide, during periods of emergency "or in ordinary times" to take measures that derogated from the right to life and inviolability of freedom. Even if such measures were taken only in so far as was necessary to cope with the situation, that provision appeared to be a serious violation of article 6 of the Covenant.

40. Paragraphs 70 and 71 gave a list of the police officers or government security personnel who had been brought before the courts for causing the death of suspects or detainees during interrogation. Since it was stated in paragraph 72 that the death penalty was maintained in the Penal Code for the most heinous crimes such as murder and treason, he wondered whether, according to the principle of the proportionality of punishment, it was possible that in certain cases of homicide the person responsible was not sentenced to death. Moreover, the death of a person in police custody constituted particularly serious homicide since the victim was defenceless; could the police or security officer responsible be sentenced to death, and had that already happened? According to the information available to him, one person was alleged to have died two days after being released without any autopsy being carried out. He wanted to know why.

41. With respect to article 7 and protection against torture, it was stated in paragraph 81 of the report that the detainee should be afforded "reasonable facilities" to communicate with a lawyer, a relative or a friend of his choice. What was the nature of such facilities? Moreover, the same Act stated that that right could be denied by a police officer if he believed, on reasonable grounds, that it was necessary to prevent the detainee from communicating with the person in question. What was the maximum time for which a detainee could be prevented from communicating with a lawyer? That point was important since it was at the time a detainee was arrested and taken into custody that he was without protection.

42. Paragraphs 86 and 87 dealt with voluntary or involuntary confessions. It was interesting to note that in Tanzania, confessions were regarded as being been involuntary if they were induced by a threat, a promise or other prejudice by the police officer to whom they were made. Could an official who used such means to obtain confessions be brought to court, and had that already happened?

43. With respect to articles 9 and 10 of the Covenant, it was stated in paragraph 98 of the report that, under Tanzanian law, suspects detained or arrested without warrant might apply for bail when brought before a magistrate. However, the power vested in the courts to grant bail had been restricted in cases where the Director of Public Prosecutions certified in writing that a measure of that nature was likely to endanger the security or interests of the country. Yet, the Court of Appeal of Tanzania had ruled in a recent case that that provision should be struck from the Criminal Procedure Act as it was ultra vires of the Constitution (para. 99). He wondered whether that provision had been declared unconstitutional and abrogated.

44. Still with reference to articles 9 and 10, he noted that, according to paragraph 101, the President could, under the Preventive Detention Act of 1962, order the arrest and indefinite detention without bail of any person he considered as being dangerous to the public order or national security. That Act had been amended in 1985 to bring it into line with the provisions of the Universal Declaration of Human Rights, but what he wanted to know was whether it had been applied before 1985. On the question of deportation, it was stated in paragraph 105 that "there is no provision for compensation in cases of wrongful detention and deportation, since these are Presidential Acts and the President enjoys immunity from both criminal and civil liability for acts done in the discharge of his official functions". He requested the Tanzanian delegation to clarify that point. Could the victim request compensation from the administration as such and not from the President?

45. Going on to articles 11, 12 and 13 of the Covenant, he drew attention to an error in the Spanish version of paragraph 111 of the report, which made the Covenant say the opposite of what was intended. Paragraph 112 stated that under Tanzanian law a judgement debtor could be arrested and his detention ordered. That provision was contrary to the Covenant; did Tanzania intend amending it to bring it into line with the Covenant?

46. Still with reference to articles 11, 12 and 13 of the Covenant, he noted that paragraph 121 of the report described the three types of residence permits issued to immigrants, namely, class A, B and C. A class A permit

holder was allowed to enter and remain in Tanzania subject to conditions which might stipulate the duration of his stay, the area within which he could reside, together with the restrictions, prohibitions or limitations pertaining thereto. However, article 12, paragraph 1 of the Covenant stated that everyone lawfully within the territory of a State should, within that territory, have the right to liberty of movement and freedom to choose his residence; it made no distinction between aliens and nationals. Could the Tanzanian delegation explain how the system of compulsory areas of residence functioned?

47. Under the Immigration Act (para. 125) certain aliens were prohibited from immigrating and could be expelled. Although that prohibition which was directed at aliens suffering from contagious diseases and prostitutes was understandable in view of the seriousness of the AIDS epidemic in the countries of tropical Africa, and particularly in Tanzania's immediate neighbours, it was difficult to see what danger could be presented for the country by mentally defective persons or those suffering from mental disorder. Could the Tanzanian delegation provide further details concerning that prohibition?

48. Going on to article 14 of the Covenant, he noted that, according to paragraph 133, the minimum guarantees required under article 14, paragraph 3, were "to a large extent" catered for under Tanzanian law and practice. It would therefore appear that some were not. For example, the Code of Criminal Procedure stated that any person who was arrested must be informed of the reasons of his arrest, which was in accordance with the Covenant. However that provision was not applied when the circumstances of the arrest were such that the person concerned certainly knew the reasons for it or if, owing to his reactions, the person making the arrest was unable to inform him of the reasons for it. Was that not contrary to the presumption of innocence mentioned in article 14 of the Covenant?

49. Still with respect to article 14 of the Covenant, he noted that, according to paragraph 135 of the report, the Criminal Procedures Act enjoined police officers making arrests without warrant to take or send accused persons before a court of law within 24 hours but also that, at times, persons stayed under arrest for a long time before they were finally taken to court and that cases might take up to two years to be finalized. The difference between 24 hours and two years was disproportionately large and difficult to explain unless the system did not function properly.

50. He noted that, according to paragraph 136 of the report, the only exception to the right of every person to be defended through legal assistance was "in respect of cases being heard in Primary Courts where magistrates are not legally qualified personnel and would therefore be overwhelmed by the presence of counsel". He would like to know what sort of cases were handled by those courts.

51. On the question of juvenile offenders, paragraph 148 of the report stated that section 22 of the Young Offenders Ordinance discouraged imprisonment of children. Was the decision left to the discretion of the judge?

52. According to paragraph 149 of the report, the Constitution of the United Republic of Tanzania guaranteed separation of powers between the legislature, the executive and the judiciary and even though there was no provision expressly spelling it out, the judiciary was independent in the discharge of its judicial functions. Since Tanzania was still under a single-party system, he wondered whether judges had to be members of the party or whether they had been in the past. As for the irremovability and dismissal of judges, it was stated in paragraphs 157 and 158 that where the question of removing a justice of appeal or a judge of the High Court arose the President was required to set up a Commission composed of a Chairman and not less than two other members, and that he was able to remove a judge from office only on the recommendation of that Commission. He wondered what happened when the majority of members of the Commission opposed the removal of a judge. Could the President overrule the decision?

53. Lastly, it was stated in paragraph 161 of the report that powers of appointment, promotion and discipline of magistrates and other judicial officers in mainland Tanzania were vested in the President. What was the situation in Zanzibar?

54. Mr. WENNERGREN noted, in connection with article 7 of the Covenant, that according to paragraph 79 of the report victims of acts of torture and similar practices could petition the High Court for relief. He would like to know what kind of relief could be ordered by the High Court. Since better protection against torture and similar treatment consisted in preventive measures, and as acts of torture when they took place should be punished speedily and firmly, he asked what guarantees were provided in that respect in Tanzania.

55. Paragraph 84 of the report stated that provisions relating to medical attention did not deal with medical or scientific experiments. Yet article 7 of the Covenant stated specifically that no one was to be subjected without his free consent to medical or scientific experimentation. Did legislation in Tanzania make provision for a prohibition of that nature?

56. He noted further that corporal punishment could be given as a measure of chastisement or as a disciplinary measure in schools (para. 91 of the report) and that it was also given in a number of offences, namely, rape and robbery with violence. Yet article 7 of the Covenant prohibited cruel, inhuman or degrading treatment or punishment, and corporal punishment was generally regarded as a degrading form of punishment. What type of corporal punishment could be ordered by the courts in cases of rape or robbery with violence? In his view, corporal punishment inflicted as a disciplinary measure in schools was also degrading for the children, and he wondered whether authorization of corporal punishment in schools was compatible with article 7 of the Covenant and article 16 of the Tanzanian Constitution.

57. Mrs. CHANET noted that, according to paragraph 90 of the report, persons could be held incommunicado for a period of not more than two weeks and that the names of such persons had to be published in the Official Gazette. She wished to know how many persons were held incommunicado and what was the average period of such detention.

58. She further noted that, according to paragraph 101 of the report, the Preventive Detention Act of 1962 which authorized the President to order the arrest and indefinite detention without bail of any person he considered as being dangerous to the public order or national security had been amended in 1985 in order to bring it into line with the Universal Declaration of Human Rights and the Covenant. Could the Committee be informed of the amendments made and in what respects the new Act was more in conformity with the Covenant?

59. It was stated, in connection with the deportation measures mentioned in paragraph 105 of the report, that "there is no provision for compensation in cases of wrongful detention and deportation, since these are Presidential Acts and the President enjoys immunity from both criminal and civil liability for acts done in the discharge of his official functions". She failed to understand that provision. Since the immunity enjoyed by the President was of a personal nature she did not see why, in the case of any measures he took in the name of State in the exercise of his official functions, there could not be compensation in the event of wrongful detention because the President could not, as a person, be brought before the courts. That no longer constituted immunity for the President's person but complete immunity for the State in respect of all persons under its jurisdiction and would inevitably raise serious problems in a State based on the rule of law.

60. Referring to the question of political prisoners, she said it was her understanding that the 14 members of a Burundi opposition group detained on Tanzanian territory had been released. Had they been detained on account of their opinions or had they been accused of specific criminal acts? Furthermore, Amnesty International had indicated that South African nationals held by the African National Congress had requested the Tanzanian authorities for protection which had been refused. Was that true?

61. Mr. MÜLLERSON referred to the Preventive Detention Act under which the President could order the arrest and indefinite detention without bail of any person he considered as being dangerous (para. 101 of the report), as well as to paragraph 103, according to which the detainee must be informed of the grounds for his detention not later than 15 days from the date of his detention. However, article 9 of the Covenant stated that anyone who was arrested should be informed, at the time of arrest, of the reasons for his arrest. Were those provisions compatible with article 9 of the Covenant?

62. He associated himself with the same question raised by Mrs. Chanet concerning the 11 South Africans who had allegedly been detained by the African National Congress on Tanzanian territory. Lastly, with respect to the death sentence, he noted that, according to Amnesty International, in 1991 four death sentences had been pronounced, four others had been confirmed by the Court of Appeal and at least three persons had been executed, although their executions had not been announced officially. Yet the Tanzanian delegation had told the Committee that there had been very few executions, if any. If the information provided by Amnesty International was correct, why were executions held secret? Countries which had maintained secrecy about executions and which had abolished the death penalty had realized that their publicization helped to curb criminality. What was the situation in Tanzania in that respect?

63. Mr. DIMITRIJEVIC noted that Tanzania's report dealt with article 8 in a cursory manner, since only paragraphs 92 and 93 were devoted to it. Moreover, paragraph 92 contained an error in stating that the exceptions allowed under the Covenant were expressly provided for in article 25 (para. 3) of the Constitution. Yet the exceptions indicated in that article of the Constitution were not authorized under article 8 of the Covenant, at least not the one set out in paragraph 3 (d) (iii), namely, the national endeavour at the mobilization of human resources for the enhancement of the national, social and economic survival, progress or advancement of national productivity. Furthermore, the same article 25 stated in paragraph 1 (a) that every person was obliged to voluntarily and honestly participate in lawful and productive work. In his view, that article was contrary to article 8 of the Covenant.

64. Mr. NDIAYE wished to know how corporal punishment was regulated in practice, both as a disciplinary measure used in school as well as a punishment inflicted for an offence. Were the number of strokes left to the discretion of the teacher and the staff responsible for the application of that punishment? Corporal punishment was inflicted in cases of rape and robbery with violence but serious crimes such as murder, terrorism or drug trafficking were not mentioned. Were the offences referred to simply examples or was the list exhaustive?

65. Mr. ANDO, referring to paragraph 80 of the report and article 26 of the Constitution which entitled every person, subject to the procedure provided by the law, to institute proceedings for the protection of the Constitution and legality, asked how proceedings of that nature could be instituted. Was the law or measure complained of declared null and void by a judicial decision or was a decision on the part of the executive or legislature necessary? Furthermore, referring to what was stated in paragraph 101 of the report concerning preventive detention, he asked whether the presidential decision could be overruled by a decision on the part of the judiciary.

66. Lastly, he requested the Tanzanian delegation to explain the difficulties encountered in the application of article 14 of the Covenant that were mentioned in paragraphs 135 and 136 of the report.

67. The CHAIRMAN said it was his understanding that the Tanzanian delegation wished to defer until the following day its replies to the questions put orally by members of the Committee in connection with section II of the list of issues to be taken up. He therefore requested it to reply to the questions contained in sections III and IV of the list.

68. Mrs. MREMA (United Republic of Tanzania), referring to the first question in section III, said it should be borne in mind that the Constitution had been amended since the report had been prepared. Various parties now organized meetings and rallies throughout the country in order to make their political views known.

69. Question (b) also concerned a situation that had evolved, and the paragraph of the report to which it referred as well as the one mentioned in the previous question, should be redrafted to reflect the present situation

which was no longer characterized by the existence of a single party. The formation of political parties was described in the Act on political parties, which specified how they were to be registered.

70. The question in paragraph (c) once again referred to the past when Tanzania had only one trade union, namely, JUWATA. That union had been dissolved and replaced by OTTU (Organization of Tanzania Trade Unions). Other trade unions, such as a teachers' trade union, had also requested registration. That trade union was particularly important because teachers had recently experienced a number of problems, particularly concerning the payment of their salaries, and especially in the rural areas. Generally speaking, the trade union situation would evolve with the introduction of the multiparty system and the country would certainly have many more trade unions in future than at the present time.

71. Mr. MANGACHI (United Republic of Tanzania) emphasized that the questions set out in paragraphs (a) and (b) of section III were no longer relevant because the situation in the country had changed. At the present time citizens could express their political opinions outside the framework of the single party. As for the question in paragraph (c), the right to form trade unions was guaranteed in practice, as was demonstrated by the establishment of OTTU of which various trade unions in the country were members. Some of them had asked the authorities whether they could sever their affiliation with OTTU, and the question was at present being examined. In addition, there were various professional organizations (the medical and engineering professions, etc.). Pluralism therefore prevailed in that sphere, but it would be only in 1995, when the multiparty system had been fully developed, that a more accurate picture of the situation would be apparent.

72. Mrs. MREMA (United Republic of Tanzania), going on to the questions in section IV of the list, said that the Tanzanian delegation had already replied to the first one. As for question (b), she said that aliens enjoyed the same rights as Tanzanian citizens, as indicated in the report. Their rights were, however, hedged about by a very small number of restrictions dealing mainly with equality of opportunity in employment. For example, under the Immigration Act, aliens wishing to work in Tanzania must first obtain a work permit, which was issued only to those who were sure of getting the job they wanted. Before hiring an alien, the employer, whether public or private, had to prove that no Tanzanian had the qualifications required to do the job in question. The purpose of that measure was to ensure that Tanzanian citizens were not put at a disadvantage in comparison with aliens. For the rest, aliens enjoyed the same rights as Tanzanian citizens.

73. Replying to the question in paragraph (c), she explained that there were two major religions in Tanzania: Islam and Christianity, which comprised various denominations. Those two religions were of equal importance. In addition, there were various minority religions, such as Hinduism. As for linguistic minorities, she said that Swahili was the most important spoken language in the country, including the rural areas; the second in importance was English, which was used mainly by persons with a secondary education. Her delegation was unable to provide percentages indicating the linguistic

structure of the country, although it could say that each province had its own language, distinguishing it from other provinces, and that various languages were used within one and the same province.

74. Mr. MANGACHI (United Republic of Tanzania), supplementing the replies provided by Mrs. Mrema to the rather theoretical questions contained in section IV, said that question (a) dealt with a matter to which the Tanzanian Government attached great importance. More should undoubtedly be done to ensure equality of the sexes, namely, by offering women greater educational and employment opportunities. That would certainly constitute a major undertaking.

75. Moreover, the population's growing awareness of the rights guaranteed them by the Constitution was a direct result of the improvement in the country's social and economic conditions. That matter should therefore be viewed in the broader context of the efforts made by the Government to improve the economic and social situation.

76. The rights of aliens were embodied in the Constitution, and his delegation would revert to that point more fully at a later date. Aliens were subject to no discriminatory provisions except possibly in respect of the right to vote, which they did not enjoy. The rights of refugees were also guaranteed. Over 300,000 refugees had sought asylum in Tanzania, in addition to political refugees from South Africa who were returning to their country.

77. Referring to question (c), he observed that the ethnic, linguistic and religious structure of the country was harmonious and that no problem arose in that connection. There were various ethnic groups in Tanzania, which comprised a total of 127 tribes, but their coexistence did not give rise to any conflict. All the ethnic groups had a common language, namely, Swahili and they constituted a single nation. Lastly, he said that, although he was uncertain that he had understood the question correctly, freedom of religion was guaranteed in Tanzania.

78. The CHAIRMAN explained for the benefit of the Tanzanian delegation that question (c) concerned respect for the provisions of article 27 of the Covenant, which he read out.

79. He invited members of the Committee to put questions to the Tanzanian delegation in respect of sections III and IV of the list.

80. Mr. ANDO noted that, according to paragraph 177 of the report, radio and television were owned and, to some extent, controlled by the Government. Would that situation change with the emergence of the multiparty system? If not, he would like to know what regulations were in force and what the practice was in that field.

81. He also noted from paragraph 184 of the report that the right to free association was subject to certain restrictions. He was sure that the situation concerning that right would change as the number of trade unions increased, but would nevertheless like to know whether the administrative measures mentioned in that paragraph could be appealed before the courts.

82. Mrs. CHANET said she was concerned by the information contained in paragraph 20 of the report, according to which Tanzanian citizens could be expelled by a court order. Did that mean that the Tanzanian authorities could expel their own citizens, in other words, that banishment existed in Tanzania?

83. Moreover, it appeared that in March an Act had been passed under which any person regarded as a danger to public order could be assigned restricted residence in any part of the territory, including Zanzibar. Was that so?

84. Lastly, she noted that according to paragraph 127 of the report, the Minister responsible for immigration might, in his absolute discretion, prohibit entry into Tanzania of any alien or any category or class of aliens. There were apparently no legislative provisions to which the Minister had to refer and the decision was his alone. If so, that situation raised a problem in connection with article 13 of the Covenant. Moreover, she would like to know what criteria were used to define a "class of aliens", and was concerned about the possibly discriminatory nature of the measure referred to in that paragraph.

85. Mr. DIMITRIJEVIC raised the question of respect for the right to freedom of expression provided for in article 19 of the Covenant. Paragraph 176 of the report indicated the guarantees provided by the Constitution, but it was common knowledge that although many countries had excellent constitutions certain problems nevertheless arose. In paragraph 177 it was stated that enjoyment of the right to freedom of opinion and expression was subject to the laws of the land, some of which contained an element of control. He would appreciate details of the laws describing those restrictions and on the nature of such restrictions. Article 19 of the Covenant listed a few, but those which were applied under Tanzanian law were not indicated in the report. He pointed out that, during a period of transition like the one through which Tanzania was passing, freedom of expression had to be exercised within reasonable limits. Indeed, in certain countries the removal of restrictions depriving citizens of the right to criticize the authorities had resulted in anarchy, since the population had confused freedom of expression with total lack of responsibility. The Government should therefore take steps in due course to ensure that the right to freedom of expression was stated explicitly and in a detailed manner in legislation and that it was not hedged about by unreasonable restrictions. In that respect, the Tanzanian authorities could refer to the Committee's general comments in relation to article 19 of the Covenant.

86. Paragraph 177 of the report stated that the radio and television were controlled by the Government "to some extent". How was that control exercised? Was it through an independent body which monitored those media and on which the State was represented, as was the case in a number of other countries? As for the press, paragraph 177 of the report indicated that, with the exception of government and party newspapers, it was completely free. He would like to know whether the newspapers in question were those of the former single party. Generally speaking, a solution had to be found to the problem of newspapers and publications in Tanzania which, as was recognized in the report, were often very short-lived. In future, party newspapers would probably no longer be subsidized by the Government and the press would be financed by private capital. Yet there would undoubtedly be publications

without adequate capital ensuring even weekly publication. He wondered whether the Tanzanian authorities would provide them with certain subsidies in order to help the press serve its democratic objectives. He would also like to know whether the problem of paper supplies, which arose in certain countries, was being experienced in Tanzania as well.

87. Mrs. HIGGINS wondered about the application of article 12 of the Covenant in Tanzania. Could people be banished from the country? If so, was it a measure that was necessarily part of a penalty imposed in the form of a court sentence or could it be taken in other circumstances?

88. Mr. NDIAYE was of the view that paragraph 178 of the report revealed an incorrect interpretation of the provisions of article 20 of the Covenant. He would like to know whether the authorities had taken measures to prohibit propaganda for war and if so which.

89. Moreover, according to certain sources, the Tanzanian Government had recently expelled Burundi refugees. What exactly was the position?

90. As for question (a) of section IV of the list of issues to be dealt with, he noted that far from being theoretical it was, on the contrary, highly practical. Although the report provided various details concerning the equality of the sexes in Tanzania, he would appreciate it if the Tanzanian delegation could, if possible, supplement that information.

91. Mr. AGUILAR URBINA associated himself with the question put by Mrs. Chanet and Mrs. Higgins concerning banishment. He also wondered whether the freedom of the press, referred to in paragraphs 22 et seq of the report was real; it was stated that the Registrar of Newspapers was very liberal, but the main question was whether or not there was censorship. Furthermore, paragraphs 25 and 177 of the report suggested that newspapers and publications were experiencing a sort of natural death. In that connection he endorsed the questions asked by Mr. Dimitrijevic. Lastly, he drew attention to the questions he had already raised concerning the application of articles 12 and 13 of the Covenant.

92. Mr. SERRANO CALDERA noted that, in paragraph 181, Tanzania was described as a one-party State. The constitutional reform had admittedly opened the way to a multiparty system. However, it was indicated in the same paragraph 181 that there was restriction on the ability of people to join trade unions and that Tanzanian workers could join JUWATA, one of the mass organs affiliated with CCM. He would like to know whether there were several trade unions in Tanzania.

93. He then referred to a recent report by the International Labour Organisation concerning the application of its Convention No. 29 on Forced Labour which Tanzania had ratified. That report drew attention to a number of provisions concerning forced labour in a series of Tanzanian laws that he read out. Under those provisions, it appeared that the administrative authority could impose forced labour on the basis of a general work obligation for economic development purposes. Moreover, in connection with the application of ILO Convention No. 98 on the right of organization and collective bargaining (also ratified by Tanzania), the same report mentioned a series of

laws under which collective agreements, including wage agreements, were subject to ratification by the Tanzanian Government. He therefore requested information on the present status of those various legislative provisions which were directly connected with the right to trade union freedom embodied in article 22 of the Covenant.

94. The CHAIRMAN thanked the Tanzanian delegation for its replies and comments and invited the Committee to continue consideration of the second periodic report of the United Republic of Tanzania (CCPR/C/42/Add.12) at a future meeting.

The meeting rose at 6.05 p.m.